

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
CUT BANK CREEK (BASIN 41L)  
INTERLOCUTORY DECREE

\* \* \* \* \*

CLAIMANT: Torgerson Farms Partnership

OBJECTORS: Blackfeet Tribe; United States of America (Bureau of  
Indian Affairs)

**41L-0009-I-2022**  
41L 30109503

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

The Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) ("BIA") filed objections to all elements of Torgerson Farms Partnership stock claim 41L 30109503.

The claim also received a notice issue remark concerning lack of the claim's inclusion in the previous decree. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Montana law requires the Water Court to resolve issue remarks.

The court held a status conference to discuss the objections to the claim. Torgerson Farms Partnership failed to attend the status conference. The Blackfeet Tribe and the BIA, with leave of court, made a motion pursuant to Rule 22, W.R.Adj.R., for claimant Torgerson Farms Partnership to Show Cause why claim 41L 30109503 should not be amended to a later priority date, the type of historical right to "use," and to exclude trust land from the point of diversion and place of use. The court set a show cause filing deadline for Torgerson Farms Partnership. Torgerson Farms Partnership did not respond by the deadline.

### **Issues**

1. Are the later priority date, amended type of historical right, and reduced point of diversion and place of use requested by the Blackfeet Tribe and the BIA a just sanction?
2. Is the notice issue remark noting the lack of the claim's inclusion in the previous decree resolved?

### **Findings of fact**

1. A preponderance of evidence establishes the historically accurate priority date for claim 41L 30109503 is August 26, 1904, and the historically accurate type of historical right is "use."

2. The legal land description for the place of use located in Section 22 should be refined to Government Lot 1, NENE of Section 22, Township 34 North, Range 6 West, Glacier County.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. The Court may grant a dispositive motion before the issuance of a hearing track Order. Rule 16(a), W.R.Adj.R.

4. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.; *See also* Section 85-2-248(9), MCA.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water

right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Issue 1 – sanction and Blackfeet Tribe and BIA objections**

There was no evidence in the record supporting the requested sanction. A deadline was set for the Blackfeet Tribe and the BIA to file evidence supporting the requested sanction. On December 9, 2022, the Blackfeet Tribe and the BIA filed a Joint Motion for Show Cause Order. The Blackfeet Tribe and the BIA included a Homestead Certificate and a Desert Lands Certificate (“Certificates”) with their motion. When taken together the Certificates included the point of diversion and place of use legal land description identified by claim 41L 30109503 and supported reducing the priority date, modifying the type of historical right, and refining the point of diversion and place of use legal land description.

Copies of the Certificates are included with this report. Both the report and the Certificates will be placed in the claim file for future reference.

### **Conclusions of law**

Based upon the Blackfeet Tribe’s and the BLM’s objection to stock claim 41L 30109503, the Blackfeet Tribe’s and the BIA’s request to amend the claim’s type of historical right, priority date, point of diversion, and place of use, the evidence filed in support of the request to amend claim 41L 30109503, and Torgerson Farm Partnership’s repeated failure to comply with Orders issued by the Water Master, the requested sanction appears just. The Blackfeet Tribe’s and the BIA’s objections are resolved.

### **Issue 2 – notice issue remark resolution**

Stock claim 41L 30109503 appeared in the Interlocutory Decree with the following notice issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41L DECREE ISSUED 10/08/2015.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. These case proceedings resolve the only objections filed against the claim.

### **Conclusions of law**

The notice issue remark noting lack of the claim's inclusion in the previous decree served its purpose.

### **Recommendations**

Stock claim 41L 30109503 should be amended as follows to accurately reflect historical use.

<b><u>TYPE OF HISTORICAL RIGHT:</u></b>	<del>FILED</del>	USE
<b><u>PRIORITY DATE:</u></b>	<del>JUNE 1, 1899</del>	AUGUST 26, 1904

#### **POINT OF DIVERSION AND PLACE OF USE:**

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	NENE	22	34N	6W	GLACIER
	NWNW	23	34N	6W	GLACIER
4	SE	15	34N	6W	GLACIER

The issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

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**Service via Electronic Mail**

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**Note: Service List Updated 2/3/2023**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
CUT BANK CREEK  
BASIN 41L**

**Water Right Number:** 41L 30109503 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TORGERSON FARMS PARTNERSHIP  
PO BOX 236  
ETHRIDGE, MT 59435

**Priority Date:** AUGUST 26, 1904

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** BIG ROCK COULEE

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NENE	22	34N	6W	GLACIER
<b>Period of Diversion:</b> DECEMBER 31 TO JANUARY 1						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		NWNW	23	34N	6W	GLACIER
<b>Period of Diversion:</b> DECEMBER 31 TO JANUARY 1						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3	4	SE	15	34N	6W	GLACIER
<b>Period of Diversion:</b> DECEMBER 31 TO JANUARY 1						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						

**Period of Use:** DECEMBER 31 TO JANUARY 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENE	22	34N	6W	GLACIER
2			NWNW	23	34N	6W	GLACIER
3		4	SE	15	34N	6W	GLACIER

# THE UNITED STATES OF AMERICA



To all to whom these Presents shall come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Great Falls, Montana

whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Philip Gunnell

has been established and duly consummated, in conformity to law, for the East numbered four and section fifteen the South half of the South West quarter of Section fourteen and the North East quarter of the North West quarter of Section twenty-three in Township thirty-four North of Range six West of Montana Meridian in Montana containing one hundred and fifty one acres and thirty nine hundredths of an acre

according to the Official Plat of the Survey of said Land, returned to the General Land Office by the Surveyor General.

Now know ye that there is, therefore, granted by the United States unto the said Philip Gunnell

the tract of Land above described: To have and to hold the said tract of Land with the appurtenances thereof, unto the said Philip Gunnell and to his and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a mine or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, J. Theodore Roosevelt  
of the United States of America, have caused these letters to be made Patent,  
and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-second  
day of August, in the year of our Lord one thousand  
nine hundred and four



# The United States of America,

Secret Land  
CERTIFICATE

No. 2452

Wingard of

To all to whom these presents shall come, Greeting:

~~Wingard of~~ Philip Yunch, assignee of John U. Wingard of Teton County, Montana

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, Montana, whereby it appears that full payment has been made by the said Philip Yunch

according to the provisions of the Act of Congress of the 25th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for and the acts supplemental thereto, for the North West quarter of the North West quarter of Section twenty-three, and the Lot numbered one of Section twenty-two, in Township thirty-four North of Range six West of Montana Meridian in Montana containing twenty-one acres and fifty-five hundredths of an acre

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Philip Yunch

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Philip Yunch

and to his heirs, the said Tract above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said Philip Yunch

and to his heirs and assigns forever, subject to any valid and lawful water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and canals and in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is hereby granted, as a right of way, for ditches or canals constructed by the United States

In testimony whereof, J. M. McKean, President of the United States of America, has caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the second day of September, in the year of our Lord one thousand eight hundred and last, and of the Independence of the United States three hundred and twenty seventh.

BY THE PRESIDENT:

J. M. McKean

By J. M. McKean, Secretary.

W. H. Brewster, Recorder of the General Land Office.

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